UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Montel Pullen et al.

Plaintiffs,

v.

McDonald's Corporation et al.,

Defendants.

Case No. 5:14-cv-11081-JCO-MJH

Hon. John Corbett O'Meara
Hon. Magistrate Michael Hluchaniuk

Stipulated Protective Order

Matthew Lampe (NY 4620852)
JONES DAY
222 East 41st Street
New York, New York 10017-6702
212-326-3939
mwlampe@jonesday.com

Lawrence C. DiNardo (IL 312594)
Elizabeth B. McRee (IL 6275501)
Jonathan Linas (IL 6290055)
JONES DAY
77 W. Wacker Drive
Chicago, Illinois 60601-1692
712-782-3939
lcdinardo@jonesday.com
emcree@jonesday.com
jlinas@jonesday.com

Kathryn S. Wood (P55012)
DICKINSON WRIGHT
500 Woodward Avenue, Suite 400
Detroit, Michigan 48226-3425
313-223-3500
kwood@dickinson-wright.com

James D. Kurek (0023523)
Richard Millisor (0062883)
Joseph J. Brennan (0085353)
FISHER & PHILLIPS
9150 South Hills Blvd., Suite 3000
Cleveland, Ohio 44147
440-838-8800
jkurek@laborlawyers.com
rmillisor@laborlawyers.com
jbrennan@laborlawyers.com

Linda J. Somers (P33018)
Jonathan T. Walton, Jr. (P32969)
WALTON & DONNELLY, P.C.
24055 Jefferson Ave., Ste. 101
St. Clair Shores, Michigan 48080
586-773-5552
linda.somers@waltondonnelly.com
jonathan.walton@waltondonnelly.com

Attorneys for Defendant ECS Partnership

Attorneys for Defendants McDonald's Corporation and McDonald's USA, LLC

David P. Dean (D.C. 437030)
Darin M. Dalmat (D.C. 978922)
Ryan E. Griffin (D.C. 1007078)
Danny M. Rosenthal (DC 1010473)
JAMES & HOFFMAN, P.C.
1130 Connecticut Ave., NW, Suite 950
Washington, DC 20036
202-496-0500
dpdean@jamhoff.com
dmdalmat@jamhoff.com
regriffin@jamhoff.com
dmrosenthal@jamhoff.com

John R. Canzano (MI P30417)
Darcie R. Brault (MI P43864)
McKNIGHT, McCLOW, CANZANO, SMITH & RADTKE, P.C.
400 Galleria Officentre, #117
Southfield, Michigan 48034
248-354-9650
jcanzano@michworklaw.com
dbrault@michworklaw.com

Attorneys for Plaintiffs

As set forth below, Plaintiffs Montel Pullen, Sharnell Grandberry, Dominique Stewart, and Adrian Williams—on behalf of themselves and others who have joined or may join this action—and Defendants McDonald's Corporation, McDonald's USA, LLC, and ECS Partnership (each individually a "**Party**" and collectively, the "**Parties**") stipulate to the entry of an agreed protective order.

1. The Parties represent that certain discovery materials to be exchanged in this case—including documents, interrogatory answers, deposition testimony, and other discovery—may contain confidential, non-public information of a personal, financial, or commercial nature that may constitute a trade secret or proprietary information or that otherwise may qualify for protection under Rule 26 of the Federal Rules of Civil Procedure (**Rule 26**). The Parties do not wish unreasonably to impede or burden the discovery process but, at the same time, recognize an obligation to take reasonable steps to safeguard legitimate confidentiality concerns.

2. Upon entry of an Order by this Court, this Protective Order shall govern through the course of discovery and pretrial proceedings the production and disclosure of all information including electronically stored information and documents produced by third parties, disclosed in the course of the legal action titled: *Pullen, et al. v. McDonald's Corporation, et al.*, Case No. 5:14-cv-11081 JCO-MJH, designated as "**CONFIDENTIAL**" or "**HIGHLY CONFIDENTIAL**" under paragraphs 6 and 7. This Protective Order is not intended to govern at trial or appeal. The Parties will cooperate in establishing procedures acceptable to the

Court with respect to the protection of information designated as "CONFIDENTIAL" and/or "HIGHLY CONFIDENTIAL" under this Protective Order both at trial and upon any appeal of this case.

3. For purposes of this Protective Order, "**Discovery Materials**" shall include documents produced pursuant to the voluntary disclosure requirements of Rule 26, documents produced pursuant to Rule 34 of the Federal Rules of Civil Procedure, interrogatory answers, responses to requests for admission, deposition testimony, and all other information that may be disclosed in the course of formal or informal discovery in this action, as well as compilations or excerpts of such materials. Discovery Materials shall also include documents produced, in response to subpoenas or otherwise, by persons or companies who are not parties to this lawsuit. Third parties may designate information produced in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" under this Protective Order. But nothing in this Protective Order shall impose any restrictions on the use or disclosure by a party or witness of documents, materials, or information obtained by such party or witness independently of the discovery proceedings in this action, whether or not such documents, material, or information are also obtained through discovery proceedings in this action. Similarly, nothing herein shall prevent a party from seeking protection under Rule 26 or otherwise for documents, material, or information obtained by another party or witness independently of the discovery proceedings in this action.

4. This Protective Order shall not abrogate or diminish any privilege or any contractual, statutory, or other legal obligation or right of any third party or

Party with respect to Discovery Materials, nor shall it operate to waive any discovery objection or require a party to disclose any information, documents, or materials.

5. Each Party shall keep confidential and not use or disseminate outside the boundaries of this litigation, any records that any third party or other Party designates as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," except as provided in paragraphs 12 and 14 below.

6. Any Party or third party may designate any Discovery Materials as "CONFIDENTIAL" that (1) reflect the producing Party's or the producing third party's trade secrets or confidential business, operations, processes, and technical and competitive information within the scope of Rule 26(c)(1)(G), the disclosure of which is likely to harm that Party's or that third party's competitive position; (2) reflect personal or employment information regarding a current or former employee or person that the producing Party or producing third party treats as confidential; or (3) otherwise qualify for protection under Rule 26.

7. Any Party or third party may designate any Discovery Materials as "HIGHLY CONFIDENTIAL" if such material qualifies for protection under Rule 26 and if the disclosure of such information to another Party or third party would create a risk of financial or other injury that could not be avoided by less restrictive means, including a "CONFIDENTIAL" designation. The Parties will make their best efforts to limit the number of documents designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL", consistent with Rule 26 and so as not to unreasonably impede or burden the discovery process or the process of filing briefs

and exhibits with the Court, and so as not to unduly impede transparency of public adjudication in the federal courts.

8. Except as provided in paragraphs 12 and 14, access to Discovery Materials designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be restricted in accordance with the following provisions:

(a) Discovery Materials, and any information extracted from them, which have been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be used solely for the purposes of prosecuting or defending the claims and defenses of the Parties in this action and for no other purposes

(b) "CONFIDENTIAL" designated Discovery Materials shall be disseminated or shown only to (1) attorneys who are members or associates of the law firms listed on the pleadings or of Morgan, Lewis & Bockius retained by McDonald's Corporation and McDonald's USA, LLC for work with respect to this litigation and in-house attorneys at any Defendant (together, "**Litigation Counsel**") and supporting personnel employed by or contracted by Litigation Counsel to whom it is necessary that the Confidential Discovery Materials be disclosed for purposes of supervising, managing, or participating in this litigation; (2) a Party—including its officers and employees—whose access to the information is reasonably required to supervise, manage, or participate in this litigation; (3) class members to whom it is necessary that the Confidential Discovery Materials be disclosed for purposes of fact investigation in this litigation, and provided that they may be shown such Discovery Materials but shall not be permitted to keep copies of them, and further provided that they may not be shown "CONFIDENTIAL" information pertaining to other employees; (4) stenographers and videographers recording testimony concerning the information; (5) the Court and personnel assisting the Court; (6) experts and consultants and their staff, in accordance with the terms specified below in paragraph 8(e); (7) deponents during the course of their depositions, provided that they shall not be permitted to keep copies of said CONFIDENTIAL information; and (8) other persons such as mediators, case evaluators, and facilitators to whom the Court specifically allows disclosure, after application by the party seeking such disclosure. Any person to whom disclosure is made shall be advised of, and become subject to, the provisions of this Protective Order. There shall be no other permissible dissemination of "CONFIDENTIAL" Discovery Materials.

(c) "HIGHLY CONFIDENTIAL" designated Discovery Materials shall be disseminated or shown only to (1) Litigation Counsel and supporting personnel employed by or contracted by Litigation Counsel to whom it is necessary that the HIGHLY CONFIDENTIAL Discovery Materials be disclosed for purposes of supervising, managing, or participating in this litigation; (2) stenographers and videographers recording testimony concerning the information; (3) the Court and personnel assisting the Court; (4) experts and consultants and their staff, in accordance with the terms specified below in paragraph 8(e); and (5) deponents during the course of their depositions, provided that they shall not be permitted to keep copies of said HIGHLY CONFIDENTIAL information. Any person to whom disclosure is made shall be advised of, and become subject to, the provisions of this Protective Order. There shall be no other permissible dissemination of "HIGHLY CONFIDENTIAL" Discovery Materials.

(d) No copies or extracts of any document designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be made except by or on behalf of Litigation Counsel or by the Court and personnel assisting the Court; and such copies or extracts shall also be designated and treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" Discovery Materials and shall not be delivered or exhibited to any persons except as provided in this Protective Order.

(e) Counsel of Record may allow access to Discovery Materials designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" to their experts and consultants who are consulted in connection with this proceeding and whose access is reasonably required in connection with this proceeding, provided that, before such material is disclosed to them, any such expert or consultant who is to receive such material (1) shall be provided with a copy of this Protective Order and (2) shall execute an undertaking in the form set forth in Exhibit A. Experts and consultants shall be specifically advised that the portion of their written work that contains or discloses the substance of Discovery Material designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" is subject to all the provisions of this Protective Order. Counsel of Record disclosing such material to experts and consultants shall be responsible for obtaining the executed undertakings in advance of such disclosure and also shall retain the original executed copy of those undertakings.

(f) During depositions, Counsel of Record may show and question any witness about any Discovery Material designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." But where the witness or deponent testifies about such designated Discovery Material, the Party who marked the material "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" may instruct the Court Reporter to mark such testimony as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," as may be appropriate. Any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" document so referred to may be marked as an exhibit. Portions of deposition transcripts designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"—including both testimony and exhibits consisting of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" documents—shall be so marked and shall be subject to the protections in this order, except as otherwise stipulated by the Parties or ordered by the Court.

(g) In the event that any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" Discovery Materials are attached to, or quoted or summarized in, any pleadings, motion papers, or other papers filed with this Court or any other court and that "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information would be disclosed as a result, such

Discovery Materials, and portions of pleadings or papers that contain the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" Discovery Materials, shall be filed under seal in accordance with Local Rule 5.3 of the Local Rules for Civil Cases of the United States District Court for the Eastern District of Michigan and the judge's individual practices. For purposes of submitting a motion or stipulated order to authorize sealing, this Stipulated Protective Order shall be considered the authority for sealing required by Local Rule 5.3(b)(2)(A)(i). Only the germane portion of a filing may be sealed. A redacted copy of the motion or paper may be filed with the Court Clerk through the Court's electronic filing system and an unredacted copy of the motion or paper may be filed under seal. An unsealed or unredacted copy of the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" document, testimony, or information may be used for the judge's courtesy copies of the motion, but each page containing such confidential information shall be marked in such a way that it clearly notifies the Court that the page contains confidential information that was filed under seal pursuant to Local Rule 5.3 and the judge's individual practices. The judge's courtesy copies of the motion shall be sent directly to the Judge's chambers and not filed with the Court Clerk. A Party or interested member of the public may challenge the designation of particular documents that have been filed under seal by filing their objections with the Court.

(h) The Producing Party shall not be bound by its own designation of Discovery Materials or the information therein as "CONFIDENTIAL" or

"HIGHLY CONFIDENTIAL," but if it intentionally ceases to treat any designated Discovery Materials or information therein as protected for purposes of this litigation—including by filing such information with the Court publicly and not under seal—then the Receiving Party can challenge pursuant to paragraph 13 the Producing Party's designation of such Discovery Materials or information therein as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

(i) The inadvertent failure to designate Discovery Materials as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall not be deemed a per se waiver in whole or in part of a party's claim that such Discovery Materials should be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" under the terms of this Stipulated Protective Order; provided, however, that a party's intentional failure to treat Discovery Materials as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall waive any claim that such materials should be so treated. Any Discovery Materials that are initially produced without a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation may later be so designated by supplemental written notice to the Receiving Party as soon as practicable, and the Receiving Party shall make all reasonable efforts to retrieve all copies, if any, of such documents disclosed to persons other than those listed in paragraph 8(b), (c), and (e) hereof and to prevent further use or disclosure of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information contained therein by such persons.

9. In the event that a Party makes documents available for inspection—rather than delivering copies to another Party—no marking need be made in advance of the initial inspection. For purposes of the initial inspection, all documents produced shall be considered as marked "HIGHLY CONFIDENTIAL." Thereafter, upon the inspecting Party's selection of documents for copying, the Party or third party producing the documents may mark the copies "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraphs 6 or 7 above.

10. At the request of any designating Party or third party, made in writing following the deposition or on the record during the course of or at the conclusion of a deposition, the deposition testimony and all copies of any transcript of the deposition shall initially be considered, as a whole, to constitute "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information (whichever is specified in the request) subject to the Protective Order, and the initial copies of such deposition transcripts shall be designated accordingly on the first page as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" through the date fourteen (14) days after the receipt of the deposition transcript. Thereafter, the designating Party or designating third party shall have fourteen (14) days after receipt of the final deposition transcript to designate in writing to the other parties and the court reporter, those portions of the testimony in the transcript that the designating Party claims constitute "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information. If, at the expiration of the fourteen (14) day period, the designating Party fails to provide written notice of its intent to designate the information as

"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" then the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" designation of the deposition transcript shall be deemed waived.

11. Should one or more Counsel of Record wish to disclose any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" Discovery Materials produced by another Party or third party to a person not authorized by this Protective Order to review such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" Discovery Materials, that counsel shall first provide Counsel of Record for the producing Party or counsel for the producing third party with a clear, complete, and concise statement of the reason for the proposed disclosure by written notice at least ten (10) days before the proposed disclosure. In the written notice, the requesting Counsel of Record shall include: (a) the individual's name and business title; (b) business address; (c) business or profession; and (d) any previous or current relationship (personal or professional) with any of the Parties. If Counsel of Record for the producing Party or the counsel for the producing third party objects in writing to the disclosure within the ten (10) day period, then the Party requesting consent shall not proceed with the proposed disclosure absent a Court order so permitting, which the Party requesting consent may seek by motion after receipt of the producing Party's objection. If the Party requesting consent does not receive any objection with the ten (10) day period, then the Party may disclose such "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" material as proposed.

12. The disclosure of any Discovery Materials pursuant to the terms of this Protective Order is not intended to be and shall not be construed as a waiver of any right or a relinquishment of any confidentiality claim as to said Discovery Materials or as a waiver of any claim that the information disclosed is a trade secret or is proprietary.

13. If any dispute arises concerning whether information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" should in fact be considered as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information for purposes of this Protective Order, then the Party who objects to the designation of the information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall give written notice of the objection and shall cite this provision in the notice. The Parties (and, where applicable, a producing third party) will then engage in good faith efforts to resolve the dispute informally. If the Parties (and, where applicable, a producing third party) cannot resolve the dispute informally within fourteen (14) days of the designating Party's receipt of the written notice, the objecting Party shall have fourteen (14) days from the written notice of objection to file a motion asking the Court for an order that the information or documents so designated are not entitled to such status and protection. The designating Party shall have the burden of proof, including the burdens of production and persuasion, on the motion. The Party that loses the motion shall pay to the prevailing Party the reasonable attorney's fees and costs incurred in bringing or opposing the motion. Before the determination of that motion, the disputed information shall be treated by the parties as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." A Party's

failure to contest a designation of information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" is not an admission that the information was properly designated as such.

14. Upon final resolution of this litigation, including any appellate proceedings or expiration of time allowed to appeal, and within 60 days thereof:

(a) Unless otherwise agreed, counsel for each party shall (i) destroy all Discovery Materials marked "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and received in accordance with this Protective Order, including all copies, extracts, and summaries thereof, or (ii) return such Discovery Materials to counsel for the designating Party or designating third party. If the Party destroys such Discovery Materials instead of returning them to the producing Party or third party, it must—at the producing Parties' request—submit a declaration stating that it has destroyed the materials.

(b) Consistent with the applicable Local Rules and Operating Procedures of the Court, a designating Party or designating third party may request that the Clerk of the Court destroy all documents and things containing or referring to such Discovery Materials that were filed under seal pursuant to this Protective Order or return such materials to the filing Party or third party. As to those documents or things containing such information that cannot be so destroyed or returned, they shall be kept under seal and shall not be examined by any person without a Court order, after due notice to Counsel of Record, or the written stipulation of each Counsel of Record.

15. Nothing contained in this Protective Order shall result in a waiver of rights, nor shall any of its terms preclude a Party or third party from seeking and obtaining, upon an appropriate showing, additional protection with respect to personal, financial, commercial, confidential, trade secret, or other proprietary or confidential documents, information, or any other discovery materials or trade secrets, including, but not limited to, restrictions on disclosure.

16. The Court may modify this Protective Order at any time or consider any dispute that may arise hereunder upon motion of any Party.

17. Nothing in this Protective Order affects the admissibility of any documents, testimony, or other evidence at trial.

18. This Protective Order shall remain in effect for the duration of the action unless terminated by stipulation executed by the Counsels of Record or pursuant to a Court order. Insofar as they restrict the communication, treatment, and use of information subject to this Protective Order, the provisions of this Protective Order shall continue to be binding after the termination of this action, unless the Court orders otherwise.

Respectfully submitted by:

/s/ Darin M. Dalmat
David P. Dean (D.C. Bar No. 437030)
Darin M. Dalmat (D.C. Bar No. 978922)
Ryan E. Griffin (D.C. Bar No. 1007078)
Danny M. Rosenthal (DC 1010473)
JAMES & HOFFMAN, P.C.
1130 Connecticut Ave., NW, Suite 950
Washington, DC 20036

/s/ Richard A. Millisor
James D. Kurek (0023523)
Richard A. Millisor (0062883)
Joseph J. Brennan (0085353)
FISHER & PHILLIPS
9150 South Hills Blvd., Suite 3000
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440-838-8800
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202-496-0500
dpdean@jamhoff.com
dmdalmat@jamhoff.com
regriffin@jamhoff.com
dmrosenthal@jamhoff.com

John R. Canzano (MI Bar No. P30417)
Darcie R. Brault (MI Bar No. P43864)
McKNIGHT, McCLOW, CANZANO, SMITH & RADTKE, P.C.
400 Galleria Officentre, #117
Southfield, MI 48034
248-354-9650
jcanzano@michworklaw.com
dbrault@michworklaw.com

Attorneys for Plaintiffs

jbrennan@laborlawyers.com

Linda J. Somers (P33018)
Jonathan T. Walton, Jr. (P32969)
WALTON & DONNELLY, P.C.
24055 Jefferson Ave., Ste. 101
St. Clair Shores, Michigan 48080
586-773-5552
linda.somers@waltondonnelly.com
jonathan.walton@waltondonnelly.com

Attorneys for ESC Partnership

/s/ Elizabeth B. McRee
Lawrence C. DiNardo (IL 312594)
Elizabeth B. McRee (IL 6275501)
Jonathan Linas (IL 6290055)
JONES DAY
77 W. Wacker Drive
Suite 3500
Chicago, IL 60615
312-782-3939
lcdinardo@jonesday.com
emcree@jonesday.com
jlinas@jonesday.com

Matthew Lampe (NY 4620852)
JONES DAY
222 East 41st Street
New York, New York 10017
212-326-3939
mwlampe@jonesday.com

Kathryn S. Wood (P55012)
DICKINSON WRIGHT
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
313-223-3500
kwood@dickinson-wright.com

Attorneys for McDonald's Corporation and McDonald's USA, LLC

IT IS SO STIPULATED:

/s/ Darin M. Dalmat
David P. Dean (D.C. Bar No. 437030)
Darin M. Dalmat (D.C. Bar No. 978922)
Ryan E. Griffin (D.C. Bar No. 1007078)
Danny M. Rosenthal (DC 1010473)
JAMES & HOFFMAN, P.C.
1130 Connecticut Ave., NW, Suite 950
Washington, DC 20036
202-496-0500
dpdean@jamhoff.com
dmdalmat@jamhoff.com
regriffin@jamhoff.com
dmrosenthal@jamhoff.com

John R. Canzano (MI Bar No. P30417)
Darcie R. Brault (MI Bar No. P43864)
McKNIGHT, McCLOW, CANZANO, SMITH & RADTKE, P.C.
400 Galleria Officentre, #117
Southfield, MI 48034
248-354-9650
jcanzano@michworklaw.com
dbrault@michworklaw.com

Attorneys for Plaintiffs

/s/ Richard A. Millisor
James D. Kurek (0023523)
Richard A. Millisor (0062883)
Joseph J. Brennan (0085353)
FISHER & PHILLIPS
9150 South Hills Blvd., Suite 3000
Cleveland, Ohio 44147
440-838-8800
jkurek@laborlawyers.com
rmillisor@laborlawyers.com
jbrennan@laborlawyers.com

Linda J. Somers (P33018)
Jonathan T. Walton, Jr. (P32969)
WALTON & DONNELLY, P.C.
24055 Jefferson Ave., Ste. 101
St. Clair Shores, Michigan 48080
586-773-5552
linda.somers@waltondonnelly.com
jonathan.walton@waltondonnelly.com

Attorneys for ECS Partnership

/s/ Elizabeth M. McRee
Lawrence C. DiNardo (IL 312594)
Elizabeth B. McRee (IL 6275501)
Jonathan Linas (IL 6290055)
JONES DAY
77 W. Wacker Drive
Suite 3500
Chicago, IL 60615
312-782-3939
lcdinardo@jonesday.com
emcree@jonesday.com
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Matthew Lampe (NY 4620852)
JONES DAY

222 East 41st Street
New York, New York 10017
212-326-3939
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Kathryn S. Wood (P55012)
DICKINSON WRIGHT
500 Woodward Avenue, Suite 4000
Detroit, MI 48226-3425
313-223-3500
kwood@dickinson-wright.com

Attorneys for McDonald's Corporation and McDonald's USA, LLC

Dated: April 3, 2015

IT IS SO ORDERED:

April 7, 2015	s/Michael J. Hluchaniuk
DATE	Hon. Michael J. Hluchaniuk U.S. Magistrate Judge